

9 FAM 42.21 Immediate relatives.

(TL:VISA-204; 05-15-2000)

(a) Entitlement to status.

(TL:VISA-101; 11-25-1994)

An alien who is a spouse or child of a United States citizen, or a parent of a U.S. citizen at least 21 years of age, shall be classified as an immediate relative under INA 201(b) if the consular officer has received from INS an approved Petition to Classify Status of Alien Relative for Issuance of an Immigrant Visa, filed on the alien's behalf by the U.S. citizen and approved in accordance with INA 204, and the officer is satisfied that the alien has the relationship claimed in the petition. An immediate relative shall be documented as such unless the U.S. citizen refuses to file the required petition, or unless the immediate relative is also a special immigrant under INA 101(a)(27)(A) or (B) and not subject to any numerical limitation.

[Amended by 56 FR 49676, Oct. 1, 1991.]

(b) *Spouse of a deceased U.S. citizen.*

(TL:VISA-204; 05-15-2000)

The spouse of a deceased U.S. citizen, *and each child of the spouse, will* be entitled to immediate relative status after the date of the citizen's death provided *the spouse or child* meets the criteria of INA 201(b)(2)(A)(i) and the consular officer has received an approved petition from the INS which accords such status, or official notification of such approval, and the consular officer is satisfied that the alien meets those criteria.

[Amended by 64 FR 55417.]

9 FAM 42.21 Related Statutory Provisions

(TL:VISA-48; 10-01-1991)

For provisions of INA 101(a)(27)(A) and (B), see 9 FAM 42.22 and 9 FAM 42.23 (Related Statutory Provisions).

INA 201(b)(2)(A)(i)

(TL:VISA-112; 05-23-1995)

(b)(2)(A)(i) IMMEDIATE RELATIVES.—For purposes of this subsection, the term “immediate relatives” means the children, spouses, and parents of a citizen of the United States, except that in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen’s death and was not legally separated from the citizen at the time of the citizen’s death, the alien (and each child of the alien) shall be considered, for the purposes of this subsection, to remain an immediate relative after the date of the citizen’s death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until the date the spouse remarries.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

[Amended by sec. 40701 of Pub. L. 103-322, Sep. 13, 1994.]

For provisions of INA 204, see 9 FAM 42.42 (Related Statutory Provisions).

INA 216, in part

(TL:VISA-112; 05-26-1995)

Sec. 216 (a) IN GENERAL.

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (g)(1)) and an alien son or daughter (as defined in subsection (g)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(g) DEFINITIONS.—In this section:

(1) The term “alien spouse” means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) an immediate relative (described in section 201(b)) as the spouse of a citizen of the United States,

(B) under section 214(d) as the fiancée or fiancé of a citizen of the United States, or

(C) under section 203(a)(2) as the spouse of an alien lawfully admitted for permanent residence, by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who obtains such status as a result of section 203(d).

(2) The term “alien son or daughter” means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

[Added by sec. 2 of Pub. L. 99-639, Nov. 10, 1986, as amended by sec. 6(a) of Pub. L. 100-525.]